Response to the Law Commissions’ preliminary consultation on Automated Vehicles (Law Commission Consultation Paper 240; Scottish Law Commission Discussion Paper 166)

Please note that this consultation response has been reproduced from information entered on the Citizen Space online portal.

Any personal email addresses and phone numbers have been excluded from this document.

Unanswered questions have been deleted from this document.

What is your name?

Al

What is the name of your organisation?

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

[Respondents chose from the following options:
- Personal response;
- Response on behalf of your organisation;
- Other.]

Personal response

CHAPTER 3: HUMAN FACTORS

A new role in driving automation: the “user-in-charge”

Consultation Question 1 (Paragraphs 3.24 - 3.43):

Do you agree that:

(1) All vehicles which "drive themselves" within the meaning of the Automated and Electric Vehicles Act 2018 should have a user-in-charge in a position to operate the controls, unless the vehicle is specifically authorised as able to function safely without one?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree

(2) The user-in-charge:
(a) must be qualified and fit to drive;
(b) would not be a driver for purposes of civil and criminal law while the automated driving system is engaged; but
(c) would assume the responsibilities of a driver after confirming that they are taking over the controls, subject to the exception in (3) below?

[Respondents chose from the following options: Agree; Disagree; Other.]

Disagree

They should be regarded as the driver under all circumstances

(3) If the user-in-charge takes control to mitigate a risk of accident caused by the automated driving system, the vehicle should still be considered to be driving itself if the user-in-charge fails to prevent the accident.

[Respondents chose from the following options: Agree; Disagree; Other.]

Disagree

Whoever puts a vehicle on the road should be responsible independent of whether it's driving itself or not

Consultation Question 2 (Paragraph 3.45):

We seek views on whether the label “user-in-charge” conveys its intended meaning.

Consultation Question 3 (Paragraphs 3.47 - 3.57):

We seek views on whether it should be a criminal offence for a user-in-charge who is subjectively aware of a risk of serious injury to fail to take reasonable steps to avert that risk.

[Respondents chose from the following options:
- Yes, it should be a criminal offence;
- No, it should not be a criminal offence;
- Other.]

Yes, it should be a criminal offence

When would a user-in-charge not be necessary?

Consultation Question 4 (Paragraphs 3.59 - 3.77):

We seek views on how automated driving systems can operate safely and effectively in the absence of a user-in-charge.
Consultation Question 5 (Paragraphs 3.59 - 3.77):

Do you agree that powers should be made available to approve automated vehicles as able to operate without a user-in-charge?

[Respondents chose from the following options: Agree; Disagree; Other.]

Disagree

Not yet. Technology is still too far from that point. Don't use roads as testing ground

When should secondary activities be permitted?

Consultation Question 6 (Paragraphs 3.80 - 3.96):

Under what circumstances should a driver be permitted to undertake secondary activities when an automated driving system is engaged?

Only if the system is certified by a third party to be able to handle ALL road situations, not just common ones

Consultation Question 7 (Paragraphs 3.80 - 3.96):

Conditionally automated driving systems require a human driver to act as a fallback when the automated driving system is engaged. If such systems are authorised at an international level:

(1) should the fallback be permitted to undertake other activities?

[Respondents chose from the following options: Yes; No; Other.]

No

(2) if so, what should those activities be?

CHAPTER 4: REGULATING VEHICLE STANDARDS PRE-PLACEMENT

A new safety assurance scheme

Consultation Question 8 (Paragraphs 4.102 - 4.104):

Do you agree that:

(1) a new safety assurance scheme should be established to authorise automated driving systems which are installed:

(a) as modifications to registered vehicles; or

(b) in vehicles manufactured in limited numbers (a "small series")?
(2) unauthorised automated driving systems should be prohibited?
[Respondents chose from the following options: Agree; Disagree; Other.]
Agree

(3) the safety assurance agency should also have powers to make special vehicle orders for highly automated vehicles, so as to authorise design changes which would otherwise breach construction and use regulations?
[Respondents chose from the following options: Agree; Disagree; Other.]
Disagree

Consultation Question 9 (Paragraphs 4.107 - 4.109):
Do you agree that every automated driving system (ADS) should be backed by an entity (ADSE) which takes responsibility for the safety of the system?
[Respondents chose from the following options: Agree; Disagree; Other.]
Agree

Consultation Question 10 (Paragraphs 4.112 - 4.117):
We seek views on how far should a new safety assurance system be based on accrediting the developers’ own systems, and how far should it involve third party testing.
Third party is required

Consultation Question 11 (Paragraphs 4.118 - 4.122):
We seek views on how the safety assurance scheme could best work with local agencies to ensure that is sensitive to local conditions.

CHAPTER 5: REGULATING SAFETY ON THE ROADS
A new organisational structure?

Consultation Question 12 (Paragraphs 5.30 - 5.32):

If there is to be a new safety assurance scheme to authorise automated driving systems before they are allowed onto the roads, should the agency also have responsibilities for safety of these systems following deployment?

[Respondents chose from the following options: Yes; No; Other.]

Yes

If so, should the organisation have responsibilities for:
(1) regulating consumer and marketing materials?
(2) market surveillance?
(3) roadworthiness tests?

[Answers chosen from list of options above:]

(1) regulating consumer and marketing materials.
(2) market surveillance.
(3) roadworthiness tests.

We seek views on whether the agency’s responsibilities in these three areas should extend to advanced driver assistance systems.

[Respondents chose from the following options:
- Yes, extend to advanced driver assistance systems;
- No, do not extend to advanced driver assistance systems;
- Other.]

Yes, extend to advanced driver assistance systems

Driver training

Consultation Question 13 (Paragraphs 5.54 - 5.55):

Is there a need to provide drivers with additional training on advanced driver assistance systems?

[Respondents chose from the following options: Yes; No; Other.]

Yes

If so, can this be met on a voluntary basis, through incentives offered by insurers?
[Respondents chose from the following options: Yes; No; Other.]

No

**Accident investigation**

**Consultation Question 14** *(Paragraphs 5.58 - 5.71):*

We seek views on how accidents involving driving automation should be investigated.

We seek views on whether an Accident Investigation Branch should investigate high profile accidents involving automated vehicles? Alternatively, should specialist expertise be provided to police forces.

**Setting and monitoring a safety standard**

**Consultation Question 15** *(Paragraphs 5.78 - 5.85):*

(1) Do you agree that the new safety agency should monitor the accident rate of highly automated vehicles which drive themselves, compared with human drivers?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree

(2) We seek views on whether there is also a need to monitor the accident rates of advanced driver assistance systems.

[Respondents chose from the following options:  
- Yes, monitor advanced driver assistance system accident rates;  
- No, do not monitor advanced driver assistance system accident rates;  
- Other.]

Yes, monitor advanced driver assistance system accident rates

**The technical challenges of monitoring accident rates**

**Consultation Question 16** *(Paragraphs 5.86 - 5.97):*

(1) What are the challenges of comparing the accident rates of automated driving systems with that of human drivers?
Are existing sources of data sufficient to allow meaningful comparisons? Alternatively, are new obligations to report accidents needed?

CHAPTER 6: CIVIL LIABILITY

Is there a need for further review?

Consultation Question 17 (Paragraphs 6.13 - 6.59):

We seek views on whether there is a need for further guidance or clarification on Part 1 of Automated and Electric Vehicles Act 2018 in the following areas:

(1) Are sections 3(1) and 6(3) on contributory negligence sufficiently clear?

[Respondents chose from the following options: Yes; No; Other.]

Yes

(2) Do you agree that the issue of causation can be left to the courts, or is there a need for guidance on the meaning of causation in section 2?

[Respondents chose from the following options:
- Leave to courts;
- Need for guidance;
- Other.]

Need for guidance

(3) Do any potential problems arise from the need to retain data to deal with insurance claims? If so:

(a) to make a claim against an automated vehicle’s insurer, should the injured person be required to notify the police or the insurer about the alleged incident within a set period, so that data can be preserved?

(b) how long should that period be?

No, this should be automatic

Civil liability of manufacturers and retailers: Implications

Consultation Question 18 (Paragraphs 6.61 - 6.116):

Is there a need to review the way in which product liability under the Consumer Protection Act 1987 applies to defective software installed into automated vehicles?

[Respondents chose from the following options: Yes; No; Other.]

Yes
CHAPTER 7: CRIMINAL LIABILITY

Offences incompatible with automated driving

Consultation Question 20 (Paragraphs 7.5 - 7.11):

We seek views on whether regulation 107 of the Road Vehicles (Construction and Use) Regulations 1986 should be amended, to exempt vehicles which are controlled by an authorised automated driving system.

[Respondents chose from the following options:
- Yes, amend regulation 107 in this way;
- No, do not amend regulation 107 in this way;
- Other.]

No, do not amend regulation 107 in this way

Consultation Question 21 (Paragraphs 7.5 - 7.11):

Do other offences need amendment because they are incompatible with automated driving?

[Respondents chose from the following options: Yes; No; Other.]

No

Offences relating to the way a vehicle is driven

Consultation Question 22 (Paragraphs 7.14 - 7.19):

Do you agree that where a vehicle is:

(1) listed as capable of driving itself under section 1 of the Automated and Electric Vehicles Act 2018; and
(2) has its automated driving system correctly engaged;
the law should provide that the human user is not a driver for the purposes of criminal offences arising from the dynamic driving task?

[Respondents chose from the following options: Yes; No; Other.]

No

Consultation Question 23 (Paragraph 7.21):

Do you agree that, rather than being considered to be a driver, a user-in-charge should be subject to specific criminal offences? (These offences might include, for example,
the requirement to take reasonable steps to avoid an accident, where the user-in-charge is subjectively aware of the risk of serious injury (as discussed in paragraphs 3.47 to 3.57)).

The user should still be a driver

**Consultation Question 24** (Paragraphs 7.23 - 7.35):
Do you agree that:

(1) a registered keeper who receives a notice of intended prosecution should be required to state if the vehicle was driving itself at the time and (if so) to authorise data to be provided to the police?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree

(2) where the problem appears to lie with the automated driving system (ADS) the police should refer the matter to the regulatory authority for investigation?

[Respondents chose from the following options: Agree; Disagree; Other.]

Disagree

Police could ask for support, but the investigation should lie with them

(3) where the ADS has acted in a way which would be a criminal offence if done by a human driver, the regulatory authority should be able to apply a range of regulatory sanctions to the entity behind the ADS?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree

(4) the regulatory sanctions should include improvement notices, fines and suspension or withdrawal of ADS approval?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree

Any doubt about the ADS function should lead to preemptive suspension of the ADS approval

Unlike drivers, ADS are perfect clones: a fault one is likely to manifest itself in others
Responsibilities of “users-in-charge”

Consultation Question 25 (Paragraphs 7.37 - 7.45):

Do you agree that where a vehicle is listed as only safe to drive itself with a user-in-charge, it should be a criminal offence for the person able to operate the controls (“the user-in-charge”):
(1) not to hold a driving licence for the vehicle;
(2) to be disqualified from driving;
(3) to have eyesight which fails to comply with the prescribed requirements for driving;
(4) to hold a licence where the application included a declaration regarding a disability which the user knew to be false;
(5) to be unfit to drive through drink or drugs; or
(6) to have alcohol levels over the prescribed limits?

[Answers chosen from list of options above:]

(1) not to hold a driving licence for the vehicle;
(2) to be disqualified from driving;
(3) to have eyesight which fails to comply with the prescribed requirements for driving;
(5) to be unfit to drive through drink or drugs; or
(6) to have alcohol levels over the prescribed limits.

Consultation Question 26 (Paragraphs 7.37 - 7.45):

Where a vehicle is listed as only safe to drive itself with a user-in-charge, should it be a criminal offence to be carried in the vehicle if there is no person able to operate the controls.

[Respondents chose from the following options: Yes; No; Other.]

Yes

If it happens knowingly

Responsibilities for other offences

Consultation Question 27 (Paragraphs 7.48 - 7.65):

Do you agree that legislation should be amended to clarify that users-in-charge:
(1) Are “users” for the purposes of insurance and roadworthiness offences; and
(2) Are responsible for removing vehicles that are stopped in prohibited places, and would commit a criminal offence if they fail to do so?

[Respondents chose from the following options: Agree; Disagree; Other.]

Agree
**Consultation Question 28 (Paragraphs 7.59 - 7.61):**

We seek views on whether the offences of driving in a prohibited place should be extended to those who set the controls and thus require an automated vehicle to undertake the route.

Yes, this should be the case

**Obligations that pose challenges for automated driving systems**

**Consultation Question 29 (Paragraphs 7.71 - 7.88):**

Do you agree that legislation should be amended to state that the user-in-charge is responsible for:

(1) duties following an accident;
(2) complying with the directions of a police or traffic officer; and
(3) ensuring that children wear appropriate restraints?

[Answers chosen from list of options above:]

(1) duties following an accident;
(2) complying with the directions of a police or traffic officer; and
(3) ensuring that children wear appropriate restraints.

**Aggravated offences**

**Consultation Question 32 (Paragraphs 7.92 - 7.123):**

We seek views on whether there should be a new offence of causing death or serious injury by wrongful interference with vehicles, roads or traffic equipment, contrary to section 22A of the Road Traffic Act 1988, where the chain of causation involves an automated vehicle.

[Respondents chose from the following options:
- Yes, new offence;
- No, no new offence;
- Other.]

No, no new offence

**Consultation Question 33 (Paragraphs 7.113 - 7.123):**

We seek views on whether the Law Commissions should review the possibility of one or more new corporate offences, where wrongs by a developer of automated driving systems result in death or serious injury.

[Respondents chose from the following options:
CHAPTER 8: INTERFERING WITH AUTOMATED VEHICLES

Consultation Question 34 (Paragraphs 8.1 - 8.58):

We seek views on whether the criminal law is adequate to deter interference with automated vehicles. In particular:

(1) Are any new criminal offences required to cover interference with automated vehicles?

   [Respondents chose from the following options: Yes; No; Other.]

   No

(2) Even if behaviours are already criminal, are there any advantages to re-enacting the law, so as to clearly label offences of interfering with automated vehicles?

   [Respondents chose from the following options: Yes; No; Other.]

   No

Tampering with vehicles

Consultation Question 35 (Paragraphs 8.28 - 8.31):

Under section 25 of the Road Traffic Act 1988, it is an offence to tamper with a vehicle’s brakes “or other mechanism” without lawful authority or reasonable cause. Is it necessary to clarify that “other mechanism” includes sensors?

   [Respondents chose from the following options: Yes; No; Other.]

   Yes

Unauthorised vehicle taking

Consultation Question 36 (Paragraphs 8.32 - 8.39):

In England and Wales, section 12 of the Theft Act 1968 covers “joyriding” or taking a conveyance without authority, but does not apply to vehicles which cannot carry a person. This contrasts with the law in Scotland, where the offence of taking and driving
away without consent applies to any motor vehicle. Should section 12 of the Theft Act 1968 be extended to any motor vehicle, even those without driving seats? [Respondents chose from the following options: Yes; No; Other.]

Yes

**Causing danger to road users**

**Consultation Question 37** (Paragraphs 8.6 - 8.12):

In England and Wales, section 22A(1) of the Road Traffic Act 1988 covers a broad range of interference with vehicles or traffic signs in a way which is obviously dangerous. In Scotland, section 100 of the Roads (Scotland) Act 1984 covers depositing anything a road, or inscribing or affixing something on a traffic sign. However, it does not cover interfering with other vehicles or moving traffic signs, even if this would raise safety concerns. Should section 22A of the Road Traffic Act 1988 be extended to Scotland?

[ Respondents chose from the following options: Yes; No; Other.]

No

None of your business, this up to the Scots to decide

**CHAPTER 9: “MACHINE FACTORS” – ADAPTING ROAD RULES FOR ARTIFICIAL INTELLIGENCE DECISION-MAKING**

**Should automated vehicles ever mount the pavement?**

**Consultation Question 39** (Paragraphs 9.6 - 9.37):

We seek views on whether a highly automated vehicle should be programmed so as to allow it to mount the pavement if necessary:

(1) to avoid collisions;
(2) to allow emergency vehicles to pass;
(3) to enable traffic flow;
(4) in any other circumstances?

[Answers chosen from list of options above:]

(1) to avoid collisions;
(2) to allow emergency vehicles to pass;

Only if no pedestrians present. Only for short periods of time of no other solution possible.

Pavement is not a road substitute
Consultation Question 40 (Paragraphs 9.6 - 9.37):

We seek views on whether it would be acceptable for a highly automated vehicle to be programmed never to mount the pavement.

There may be exceptional circumstances when it would be appropriate, so categorical refusal is not a good option. However under normal operation this must obviously not happen and if it does it must happen safely. The decision should eventually lie with a human user.

Should highly automated vehicles ever exceed speed limits?

Consultation Question 41 (Paragraphs 9.40 - 9.47):

We seek views on whether there are any circumstances in which an automated driving system should be permitted to exceed the speed limit within current accepted tolerances.

No

Edging through pedestrians

Consultation Question 42 (Paragraphs 9.49 - 9.55):

We seek views on whether it would ever be acceptable for a highly automated vehicle to be programmed to “edge through” pedestrians, so that a pedestrian who does not move faces some chance of being injured. If so, what could be done to ensure that this is done only in appropriate circumstances?

Never allow this. Not for self driving cars or for drivers. You could allow self driving trucks to edge through other cars, though. Even if they get a bit dented. They're just cars, after all.

Avoiding bias in the behaviour of automated driving systems

Consultation Question 43 (Paragraphs 9.68 - 9.74):

To reduce the risk of bias in the behaviours of automated driving systems, should there be audits of datasets used to train automated driving systems?

[Respondents chose from the following options: Yes; No; Other.]

Yes

Can't have a car only recognize white people the road just because their training data is biased.
Transparency

Consultation Question 44 (Paragraphs 9.76 - 9.88):

We seek views on whether there should be a requirement for developers to publish their ethics policies (including any value allocated to human lives)?

[Respondents chose from the following options: Yes; No; Other.]

Yes

All code related to autonomous driving should be required be open source entirely. That way lies of car industry can reliably be treated and spotted. After all, they can't even be trusted on their pollution and mileage numbers.

Consultation Question 45 (Paragraphs 9.76 - 9.88):

What other information should be made available?

All information including the full source code and data required to reproduce the entire system.

Future work and next steps

Consultation Question 46 (Paragraphs 9.91 - 9.93):

Is there any other issue within our terms of reference which we should be considering in the course of this review?